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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re DEREK M., a Person Coming
Under the Juvenile Court Law.

B294602

(Los Angeles County
Super. Ct. No. 18CCJP06928A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

JOHNNY M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Philip L. Soto, Judge. Affirmed.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Kimberly Roura, Deputy County Counsel for Plaintiff and Respondent.

Appellant Johnny M. (father) appeals from the juvenile court's jurisdictional finding, under Welfare and Institutions Code section 300,¹ that he and Laura H. (mother),² had engaged in domestic violence in the presence of their son, Derek (born 2010), placing the child at risk of serious physical harm. Father also challenges the order for monitored visitation. We affirm the juvenile court's findings and orders.

BACKGROUND

July 2017 domestic violence referral

On July 24, 2017, the Los Angeles County Department of Children and Family Services (the Department) received a referral alleging domestic violence between father and mother. During a verbal altercation with father that occurred on July 23, 2017, mother attempted to leave the home, but father grabbed her by the arm and prevented her from doing so. Derek was present during the incident. Law enforcement officers responded to the home, and father was arrested.

The Department investigated the July 23, 2017 incident and found the domestic violence allegation to be substantiated. Mother told the social worker that during the argument with father on July 23, 2017, she told father that she was leaving. Father refused to let mother go and shoved her into a closet. Mother freed herself from the closet, and father then attempted to push her into the bathroom. When Derek attempted to intervene, father grabbed the child's arm, and mother pulled

¹ All further statutory references are to the Welfare and Institutions Code.

² Mother is not a party to this appeal.

Derek towards her. A neighbor heard the altercation and called the police.

Mother told the social worker that she had obtained a temporary restraining order against father and that she intended to obtain a permanent one. She said father had been abusive in the past but had not previously been arrested because responding police officers never observed any visible injuries on her.

Mother obtained a five-year restraining order against father requiring him to stay away from both her and Derek. After mother obtained the restraining order, the Department provided mother with counseling referrals and closed the investigation.

September 2018 referral regarding mother's substance abuse

In September 2018, the Department received a new referral alleging that mother was using methamphetamine. Mother now had a nine-month-old baby, Aliyah, and was pregnant with another child. Aliyah and Derek lived with mother and her current husband, Christopher, the father of Aliyah and the unborn child.

Mother admitted to daily methamphetamine use while caring for Aliyah and said she was willing to enter an inpatient treatment facility. She submitted to a drug test that was positive for methamphetamine and amphetamines.

The social worker interviewed Derek at his elementary school, where a school psychologist asked to speak to the social worker. The psychologist said that Derek had been diagnosed with ADHD, but school officials thought that his problems might be more extensive. Derek appeared clean and healthy and without marks or bruises. He denied any abuse by mother or

Christopher. Derek said he felt safe and happy with mother and Christopher but that he missed father.

At an October 9, 2018 meeting, mother provided the Department with a copy of the restraining order she had obtained against father. The restraining order, which expires on August 15, 2022, prohibits father from contacting mother or Derek or from being closer than 100 yards away from them, except as allowed by court-ordered visitation.

Section 300 petition and detention

On October 26, 2018, the Department filed a petition on behalf of Derek and Aliyah. The petition alleged, under section 300, subdivisions (a) and (b), that on July 23, 2017, father and mother engaged in a violent altercation in Derek's presence in which father forcibly shoved mother into a closet, and that father's violent conduct places Derek at risk of serious physical harm. The petition further alleged that mother and Christopher had a history of substance abuse, that mother tested positive for methamphetamine and amphetamine on September 19, 2018, and that Christopher was a current abuser of alcohol, placing the children at risk of serious physical harm.

Father's whereabouts were unknown at the time of the initial hearing on October 29, 2018. The juvenile court found that father was Derek's presumed father, that father was noncustodial, and that it would be detrimental to release Derek to him. The court ordered the Department to conduct a search for father and ordered no contact between Derek and father until further court order. The court ordered Derek and Aliyah released to mother on condition that she remain in her current inpatient treatment program.

Mother did not return to her inpatient treatment program, and on November 2, 2018, the juvenile court issued an order authorizing removal of the children from her. Derek and Aliyah were removed from mother and Christopher on November 5, 2018, and were placed together in foster care. At a November 8, 2018 hearing, the juvenile court ordered Derek detained from mother.

Derek told the dependency investigator in a November 19, 2018 interview that he missed Christopher, whom he referred to as his father. He then stated that Christopher was Aliyah's father, that his father's name was Johnny, and that he missed father. Derek could not say when he had last seen father.

Mother and Christopher were arrested on November 19, 2018, for threatening their landlord. The landlord reported that mother had threatened him with a knife.

The Department's efforts to locate father were successful, and a dependency investigator made telephone contact with him on November 21, 2018. Father said that he was sad and upset to learn that Derek was in foster care. He wanted Derek released to him and said he was willing to do anything to reunify with Derek.

Father told the investigator that he had not had any contact with Derek since issuance of the restraining order. Before then, he had been involved in Derek's life and had ensured that his son was well cared for. Father said he wanted to see Derek and that he had the means to provide his son with a healthy and nurturing home.

Father stated that his 10-year relationship with mother had been mostly good. He admitted to verbal altercations with mother but denied hitting her or putting his hands on her. He said mother was often the aggressor in their arguments and

would punch him or swing at him with the intention of hitting him. Father claimed mother had lied about the incident in July 2017, and that he had never laid a hand on her. He admitted, however, that he had prevented mother from leaving the home.

Father said that after his release from custody following the July 2017 domestic violence incident, he returned to the home intending to surrender his keys to mother. Mother called the police, and father was arrested for violating the restraining order. Father did not thereafter attempt to contact mother or Derek.

Father admitted that Derek was present during many verbal altercations between the parents. He expressed remorse for exposing Derek to domestic violence.

Jurisdiction and disposition

Father appeared for the first time at the December 6, 2018 jurisdiction hearing. After mother pleaded no contest, father argued that the allegations against him should be dismissed, because there was no evidence of a pattern of domestic violence with mother or that the parents intended to resume their relationship.

The juvenile court sustained the allegations against father, noting that Derek was currently at risk because father had done nothing to address his domestic violence issues.

At the December 13, 2018 disposition hearing, the juvenile court denied father's request to release Derek to his custody. The court ordered father to complete a 26-week domestic violence program and individual counseling to address case issues. The court granted father monitored visits and ordered the Department to prepare, within seven days, a written visitation schedule that included extended holiday visits for each parent.

This appeal followed.

DISCUSSION

I. Jurisdiction

A. *Justiciability*

In this appeal, father challenges the sufficiency of the evidence as to his conduct only -- he does not contest the jurisdictional findings against mother, the juvenile court's assumption of jurisdiction over Derek, or the dispositional orders regarding Derek's custody and placement. The Department argues that because the issues raised in father's appeal have no effect on either the juvenile court's assumption of jurisdiction or the dispositional orders, father's appeal is not justiciable.

A juvenile court need only find that one parent's conduct has created circumstances described in section 300 in order to assume jurisdiction over the child. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491.) "For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established. [Citation.] As a result, it is commonly said that a jurisdictional finding involving one parent is "good against both. More accurately, the minor is a dependent if the actions of either parent bring [him] within one of the statutory definitions of a dependent." [Citation.] For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence. [Citations.]" (*Id.* at p. 1492.)

An appellate court may, however, address the merits of the jurisdictional findings against one parent when that finding could be prejudicial to the parent, could potentially impact the current

or future dependency proceedings, or could have other consequences for the parent beyond jurisdiction. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*)). In *Drake M.*, the father challenged a single jurisdictional finding against him involving his use of medical marijuana. Because this single jurisdictional finding was the difference between the father being an offending versus a nonoffending parent, the court in *Drake M.* decided to address the merits of the father's appeal:

“Here, the outcome of this appeal is the difference between father's being an ‘offending’ parent versus a ‘non-offending’ parent. Such a distinction may have far-reaching implications with respect to future dependency proceedings in this case and father's parental rights. Thus, although dependency jurisdiction over Drake will remain in place because the findings based on mother's conduct are unchallenged, we will review father's appeal on the merits.”

(*Drake M., supra*, 211 Cal.App.4th at p. 763.)

For similar reasons, we exercise our discretion to address the merits of father's appeal in this case.

B. Applicable law and standard of review

Section 300, subdivision (a) accords the juvenile court jurisdiction over a child if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent.”

Section 300, subdivision (b)(1) accords the juvenile court jurisdiction over a child if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.”

We review the juvenile's court's jurisdictional findings under the substantial evidence standard. (*In re D.C.* (2015) 243 Cal.App.4th 41, 51.) Under this standard, we review the record to determine whether there is any reasonable, credible, and solid evidence to support the juvenile court's conclusions, and we resolve all conflicts in the evidence and make all reasonable inferences from the evidence in support of the court's orders. (*Ibid.*)

C. Substantial evidence supports the jurisdictional findings

The evidence here was sufficient to support the juvenile court's finding that, at the time of the jurisdiction hearing, there was a substantial risk that father's violent conduct would continue and subject Derek to risk of harm. The evidence showed that Derek was present during a July 23, 2017 violent incident between the parents, and that when the child attempted to intervene, father grabbed him by the arm. Father was arrested for spousal battery following that incident. Mother told the social worker that there had been other incidents of domestic violence to which law enforcement officers had responded, but that father had not previously been arrested because mother had no visible bruises or marks. Mother obtained a five-year restraining order protecting her and Derek from father. Father was arrested for violating the restraining order and had no contact with Derek or mother following that arrest. There is no evidence that father's domestic violence issues were ever resolved.

Father's argument that Derek suffered no actual physical harm during the July 2017 incident does not eliminate the risk of such harm. Father admitted that Derek was present during many verbal altercations between the parents. Father also

admitted that Derek was present during the July 2017 incident and that there was evidence that he had grabbed Derek by the arm when the child attempted to intervene. Father took no steps to address the issues of domestic violence that had placed Derek at risk when father was involved in the child's life. That risk had been avoided during the year that the restraining order prohibited father from contacting Derek or mother. Now that father was resuming his relationship with Derek, his unresolved domestic violence issues again placed the child at risk of harm.

In re Daisy H. (2011) 192 Cal.App.4th 713, on which father relies as support for his position, is distinguishable. The children in that case were not present during a single incident of domestic violence that had occurred at least two years before the jurisdictional hearing. They accordingly had never been placed at risk of harm. (*Id.* at p. 717.) Here, in contrast, Derek was present during many heated arguments between the parents, including the July 2017 physical altercation during which father grabbed Derek by the arm after the child attempted to intervene.

Substantial evidence supports the jurisdictional finding.

II. Visitation

Section 362.1 governs visitation between a dependent child and his or her parent. Subdivision (a)(1)(A) of the statute provides that “[v]isitation shall be as frequent as possible, consistent with the well-being of the child,” subject to the condition that “[n]o visitation order shall jeopardize the safety of the child.” (§ 362.1, subd. (a)(1)(B).)

An order setting visitation terms is reviewed for abuse of discretion. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.) An abuse of discretion does not occur unless the juvenile court has exceeded the limits of legal discretion by making an

arbitrary, capricious or patently absurd determination. (*In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 806.)

Father argues that his visits with Derek need not be supervised, and that the juvenile court abused its discretion by ordering monitored visits. Father's unresolved history of domestic violence with mother provides ample support for the juvenile court's order for monitored visitation. The order gives the Department discretion to liberalize the visits, and father can request unmonitored visits once he has demonstrated progress in his case plan. The record discloses no abuse of discretion.

Father contends the visitation order must be reversed because it does not state that visits should occur as frequently as possible, does not specify the time, place, frequency, or manner of visitation, and vests too much discretion with the Department. He cites *In re S.H.* (2003) 111 Cal.App.4th 310, *In re T.H.* (2010) 190 Cal.App.4th 1119, 1124, *In re Donovan J.* (1997) 58 Cal.App.4th 1474, and *In re Rebecca S.* (2010) 181 Cal.App.4th 1310 as support for the argument that the visitation order must be amended to specify the frequency and duration of his visits. Those cases, which involved a juvenile court's improper delegation to a child (*S.H.*), custodial parent (*T.H.*), therapist (*Donnovan J.*), and legal guardian (*Rebecca S.*), respectively, do not support father's position.

The appellate court in *Rebecca S.* distinguished between the juvenile court's non-delegable authority to determine whether visitation should occur and those aspects of visitation that could properly be delegated to a legal guardian: "The time, place, and manner of visitation may be left to the legal guardian, but leaving the frequency and duration of visits within the legal guardian's discretion allows the guardian to decide whether

visitation actually will occur. [Citation.]” (*Rebecca S., supra*, 181 Cal.App.4th at p. 1314.)

The juvenile court’s order in this case does not delegate to the Department the authority to decide whether visitation should occur. The order accords father monitored visits with Derek. The juvenile court’s failure to specify the frequency or duration of father’s visits is not a ground for reversal. Father lived in another county and had only appeared in the case a few weeks earlier. Derek was placed together with Aliyah. The Department accordingly had to coordinate the children’s visits with father, mother, Christopher, and the foster parents. Given these circumstances, a visitation order that required the Department to establish a written visitation schedule within one week was not an abuse of discretion.

DISPOSITION

The juvenile court’s jurisdictional finding and order as to father are affirmed, as is the order according father monitored visitation.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT